

Conducting an Arbitration Hearing

Defendant's Case-in-Chief, Third-Party Case-in-Chief, and Cross-Examination

I. Introduction

Arbitration hearings follow structured procedures similar to court trials but are generally more flexible and streamlined. This document outlines how to effectively conduct three critical phases of an arbitration hearing:

1. Defendant's Case-in-Chief
 2. Third-Party Case-in-Chief
 3. Cross-Examination
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II. Defendant's Case-in-Chief

A. Purpose

The Defendant's Case-in-Chief is the stage where the respondent (defendant) presents evidence to:

- Refute the claimant's allegations
- Establish affirmative defenses
- Present alternative explanations of the facts

B. Preparation

1. Case Theory Development

- Identify key legal defenses
- Align facts with applicable law

2. Witness Preparation

- Prepare fact witnesses and expert witnesses
- Conduct mock examinations

3. Exhibit Organization

- Label and pre-mark exhibits

- Ensure admissibility under arbitration rules

C. Presentation Structure

1. Opening Statement (Optional)

- Brief overview of defense narrative

2. Direct Examination of Witnesses

- Use open-ended questions
- Establish credibility and factual support

3. Introduction of Evidence

- Documents, contracts, communications, expert reports

4. Expert Testimony

- Clarify technical or specialized issues

D. Key Considerations

- Maintain clarity and consistency
- Avoid redundant testimony
- Anticipate cross-examination challenges

III. Third-Party Case-in-Chief

A. Purpose

A Third-Party Case-in-Chief arises when a respondent brings in another party (third-party respondent) who may be liable for all or part of the claimant's claim.

B. Strategic Objectives

- Shift or share liability
- Establish indemnification or contribution claims

C. Preparation

1. Legal Basis

- Identify contractual or statutory grounds for third-party liability

2. Coordination

- Align strategy with primary defense or distinguish positions where necessary

3. Evidence Development

- Focus on third-party obligations and conduct

D. Presentation Structure

1. Opening (if permitted)

- Outline third-party liability theory

2. Witness Testimony

- Focus on involvement of third party

3. Documentary Evidence

- Contracts, indemnity clauses, correspondence

4. Expert Analysis (if applicable)

- Allocation of fault or damages

E. Key Considerations

- Avoid conflicting defenses unless strategically justified
- Maintain clarity in roles of each party
- Address causation and apportionment

IV. Cross-Examination

A. Purpose

Cross-examination is used to:

- Challenge credibility of opposing witnesses
- Undermine opposing evidence
- Elicit favorable admissions

B. Principles of Effective Cross-Examination

1. Control the Witness

- Use leading questions
- Limit opportunities for narrative answers

2. Focus on Key Points

- Avoid unnecessary areas
- Target weaknesses in testimony

3. Use Prior Statements

- Impeach inconsistencies

4. Maintain Structure

- One fact per question

C. Techniques

1. Leading Questions

- Suggest the answer within the question

2. Impeachment

- Prior inconsistent statements
- Bias or interest

3. Document Confrontation

- Use exhibits to challenge testimony

4. Looping

- Reinforce key admissions through repetition

D. Common Pitfalls

- Asking open-ended questions
- Arguing with the witness
- Pursuing irrelevant lines of inquiry

V. Integration of Phases

- Ensure consistency across Defendant and Third-Party presentations

- Use cross-examination to reinforce themes introduced in case-in-chief
 - Maintain a cohesive narrative throughout the hearing
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VI. Conclusion

A well-conducted arbitration hearing requires strategic planning, clear presentation, and disciplined questioning. Mastery of the Defendant's Case-in-Chief, Third-Party Case-in-Chief, and Cross-Examination ensures a persuasive and effective advocacy approach.

VII. Appendix: Sample Question Formats

Direct Examination

- "Can you describe what happened on [date]?"
- "What was your role in the project?"

Cross-Examination

- "You reviewed the contract before signing, correct?"
 - "The report was completed after the deadline, correct?"
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